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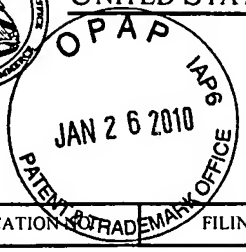

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,633	10/25/2005	Eugene Paul Wiltz Jr	63562 US	9170

7590 12/29/2009

Gary C Cohen
1147 North Fourth Street
Unit 6E
Philadelphia, PA 19123

EXAMINER	
COONEY, JOHN M	
ART UNIT	**PAPER NUMBER**
1796	

MAIL DATE	DELIVERY MODE
12/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/554,633	WILTZ JR ET AL.	
	Examiner	Art Unit	
	John Cooney	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,9-12,15-21,24-27,29-31,33,34 and 36-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,9-12,15-21,24-27,29-31,33,34 and 36-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's arguments filed 10-5-09 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 9-12, 15-21, 24-27, 29-31, 33-34 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb et al.(5,981,613) in view of Peerman et al.(4,423,162).

Cobb et al. discloses preparations of slabstock polyurethane foams prepared by mixing and reacting polyols inclusive of polyester polyols, isocyanates, blowing agents, catalysts which may be catalysts other than tin catalysts, blowing agents inclusive of water and/or other blowing agents, and surfactants as claimed by applicants (see abstract, column 1 line 37-column 5 line 33, as well as, the entire document).

Cobb et al. differs from applicants' claims in that it does not require the employment of polyester polyols as claimed by applicants. However, Peerman et al. discloses employment of the hydroxymethyl-containing polyester polyols of applicants' claims as polyols used in the preparation of polyurethane foams, for the purpose of achieving adequate product formation with less required heating on mixing (see

abstract, column 2 line 20-column 11 line 15, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the hydroxymethyl-containing polyester polyols of Peerman et al. as the polyester polyols used in the preparations of Cobb et al. for the purpose of achieving adequate product formation with less required heating on mixing in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

As to density values of claims of applicants' invention, though these ranges of density values are not particularly recited by the teachings of Cobb et al., difference based on these ranges of values is not seen as Cobb et al. discloses slabstock foams and provides a comprehensive range of blowing agent inclusion sufficient to meet this limitation of the claims. However, even if difference were evident, it would have been obvious for one having ordinary skill in the art to have varied the blowing and auxiliary-blowing agent inclusion within the teachings of Cobb et al. for the purpose of varying densities in products realized in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. Further, it has long been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. *In re Aller,* 105 USPQ 233; *In re Reese* 129 USPQ 402 . Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of the same properties. *Titanium Metals v Banner* 227 USPQ 773. **(see**

also MPEP 2144.05 I) Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F.2d 272,205 USPQ 215 (CCPA 1980).

As to new claims 36-38, it is held that Peerman et al.(column 7 lines 19-43) provides for employment of these alkylene oxide-based residues as base units in the making of their hydroxymethyl polyols. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed these units in the making of the polyols of Peerman et al. for use in the making of the products of Cobb et al. for the purpose of imparting their polymer building effect in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. Further, it is prima facie obvious to substitute equivalents, motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances. *In re Ruff* 118 USPQ 343; *In re Jezel* 158 USPQ 99; the express suggestion to substitute one equivalent for another need not be present to render the substitution obvious. *In re Font*, 213 USPQ 532. Employment of these functionally equivalent base materials from within the teachings of Peerman et al. would have the expected effect of providing material in the role of polymer building in the preparations of Peerman et al.

Applicants' arguments have been considered. However, rejection is maintained. It is held and maintained that Peerman et al. is sufficiently concerned with formation of

foams to be appropriately combined with the teachings of Cobb et al. in addressing the limitations of applicants' claims. That Peerman et al. may not expressly require foam formation using the polyols of the instant concern does not negate what is fully provided for by the teachings and fair suggestions of the combined prior art.

It is maintained that the motivation to combine is proper and appropriate in that acceptable isocyanate reactive functionality would be expected to be adequately provided for by the isocyanate reactive materials provided for by the teachings of Peerman et al.

Employment of water as a blowing agent is not a deficiency of Cobb et al., and Peerman et al. is not looked to for this feature of applicants' claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Cooney/

Primary Examiner, Art Unit 1796